

First Regular Session 111th General Assembly (1999)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 1998 General Assembly.

HOUSE ENROLLED ACT No. 1432

AN ACT to amend the Indiana Code concerning insurance.

Be it enacted by the General Assembly of the State of Indiana:

SECTION 1. IC 27-1-7-3 IS AMENDED TO READ AS FOLLOWS: Sec. 3. Each corporation shall maintain an office or place of business in this state, to be known as the "Principal Office." The post-office address of the principal office shall be stated in the original articles of incorporation at the time of incorporating. Thereafter, the location of the principal office, may be changed at any time or from time to time when authorized by the board of directors by:

(1) filing with the department and secretary of state, on or before the day any change is to take effect, a certificate signed by the president or a vice-president and the secretary or an assistant secretary of the corporation, and verified under oath, stating the change to be made and reciting that such change is made pursuant to authorization by the board of directors; **and**

(2) notifying each policyholder of the address and telephone number of the new location.

SECTION 2. IC 27-1-23-2 IS AMENDED TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]: Sec. 2. (a) No person other than the issuer shall commence a tender offer for or a request or

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invitation for tenders of, or enter into any agreement to purchase or exchange securities for, or otherwise seek to acquire, or acquire, in the open market or otherwise, or solicit proxies relating to, any voting security of a domestic insurer or of any corporation controlling a domestic insurer if, after the consummation thereof, such person would, directly or indirectly (or by conversion or by exercise of any right to acquire), be in control of such insurer, and no person shall enter into an agreement to acquire control of a domestic insurer or of any corporation controlling a domestic insurer unless, at the time any such offer, request, or invitation is commenced or any such agreement is entered into, or any such solicitation is begun, or prior to the acquisition of such securities if no offer or agreement is involved:

- (1) each acquiring party has filed with the commissioner and has sent to such insurer and any such controlling corporation a statement containing the information required by this section;
- (2) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the commissioner; and
- (3) two (2) business days have elapsed following the commissioner's determination approving the offer, request, invitation, agreement, solicitation, or acquisition;

all in the manner prescribed in this section.

(b) A statement to be filed with the commissioner under this section shall be made under oath or affirmation and shall contain the following information:

- (1) The name and address of the acquiring party.
- (2) If the acquiring party is an individual, his principal occupation and all offices and positions held during the past five (5) years, and any conviction of crimes other than minor traffic violations during the past ten (10) years.
- (3) If the acquiring party is not an individual, a report of the nature of its business operations during the past five (5) years or for such lesser period as the acquiring party and any predecessors thereof shall have been in existence, including, but not limited to:
 - (A) information relating to the acquisition or disposition of control by the acquiring party of any other person and any subsequent material change in the financial condition, management, organization, or operations of such other person;
 - (B) an informative description of the business intended to be done by the acquiring party and its affiliates;
 - (C) any plans or proposals for the conduct of the business or employment of the assets and surplus of the domestic insurer and any corporation controlling such insurer;



(D) an informative description of any transaction in which the acquiring party received, employed, or used any affiliate's assets;

(E) an informative description of any transaction or presently proposed transaction between the acquiring party and any of its affiliates in which either such acquiring party or such affiliate has a direct or indirect material interest; however, no information need be given as to any such transaction where the amount involved in the transaction or series of similar transactions, including all periodic payments or installments in the case of any lease or agreement providing for periodic payments or installments, does not or would not exceed one hundred thousand dollars (\$100,000); and

(F) a list of all individuals who are or who have been selected to become directors or officers of the acquiring party, or who perform or will perform functions appropriate to such positions, such list to include for each such individual the information required by clause (2) of this subsection.

(4) The source, nature, and amount of the consideration to be used in effecting the acquisition of control, a description of any transaction wherein funds were or are to be obtained for any such purpose (including any pledge of the insurer's stock, or the stock of any of the insurer's subsidiaries or controlling affiliates), all documents evidencing, supporting, referring to, or relating to any such transaction and the identity of persons who are furnishing or who will furnish such consideration.

(5) Fully audited financial information as to the earnings and financial condition of the acquiring party for its preceding five (5) fiscal years (or for such lesser period as such acquiring party and any predecessors thereof shall have been in existence), and similar unaudited information as of a date not earlier than ninety (90) days prior to the filing of the statement.

(6) Any plans or proposals which the acquiring party may have to liquidate such domestic insurer or such controlling corporation, to sell its assets or merge or consolidate it with any person, or to make any other material change in its investment policy, business, corporate structure, or management.

(7) The number of shares of any security referred to in subsection (a) which the acquiring party proposes to acquire, the terms of the proposed offer, request, invitation, agreement, or acquisition referred to in subsection (a), and a statement as to the method by which the terms of the proposal were arrived at.

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(8) The amount of each class of any security referred to in subsection (a) which is beneficially owned or concerning which there is a right to acquire beneficial ownership by the acquiring party.

(9) A full description of any contracts, arrangements, or understandings with respect to any security referred to in subsection (a) in which the acquiring party proposes to be or is involved, including but not limited to transfer of any of the securities, joint ventures, loan or option arrangements, puts or calls, guarantees of loans, guarantees against loss or guarantees of profits, division of losses or profits, or the giving or withholding of proxies. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(10) A description of the purchase of any security referred to in subsection (a) during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, including the dates of purchase, names of the purchasers, and consideration paid or agreed to be paid therefor.

(11) A description of any recommendations to purchase any security referred to in subsection (a) made during the twelve (12) calendar months preceding the filing of the statement by the acquiring party, or by anyone, based upon interviews or at the suggestion of such acquiring party.

(12) Copies of the proposed forms of all tender offers for, requests or invitations for tenders of, exchange offers for, and agreements to acquire or exchange any securities referred to in subsection (a), and of the proposed form of additional soliciting material relating thereto.

(13) The terms of any agreement, contract, or understanding made or proposed to be made with any broker-dealer as to solicitation of securities referred to in subsection (a) for tender, and the amount of any fees, commissions, or other compensation paid or to be paid to broker-dealers with regard thereto.

(14) A full description of any existing or proposed contracts, arrangements, or understandings between the acquiring party and any present or former director, officer, or employee of the domestic insurer or of any corporation controlling such insurer. Such description shall identify the persons with whom such contracts, arrangements, or understandings have been or will be entered into.

(15) Copies of all studies, analyses, and reports which were

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prepared by or for the acquiring party or any affiliate of the acquiring party for the purpose of evaluating or analyzing the proposed acquisition of control with respect to market shares, competition, competitors, markets, and potential for growth or expansion into product or geographic markets.

(16) If the acquiring party or any affiliate of the acquiring party is an insurer:

(A) the amount of any premiums, deposits, or annuity considerations received by the insurer during each of the last five (5) fiscal years (calculated on an accrual basis) for each line of insurance business conducted in any section of this state, and copies of annual statements for each of the last five (5) fiscal years filed by any such insurer with the insurance regulatory authority of its domiciliary jurisdiction;

(B) a full and complete description of any direct or indirect reinsurance relationship between the acquiring party or any affiliate of the acquiring party and the domestic insurer or any affiliate of the domestic insurer, together with copies of any treaties or contracts relating to that relationship; and

(C) such additional information as the commissioner may by rule or order prescribe as necessary or appropriate to enable him to make the determination required by subsection (e)(2).

(17) Such additional information as the commissioner may by rule or order prescribe as necessary or appropriate for the protection of policyholders or in the public interest.

If any material change occurs in the facts set forth in a statement filed with the commissioner and sent to the insurer and any controlling corporation under this section, an amendment made under oath or affirmation setting forth the change, together with copies of all documents and other material relevant to the change, shall be filed with the commissioner and sent to the insurer and any controlling corporation within two (2) business days after any acquiring party learns of this change.

(c) If any acquiring party is a partnership, limited partnership, syndicate, or other group, the commissioner may require that the information called for by subdivisions (1) through (17) of subsection (b) shall be given with respect to each partner of such partnership or limited partnership, each member of such syndicate or group, and each person who controls such partner or member. If any such partner, member, person, or acquiring party is a corporation, the commissioner may require that the information called for by subdivisions (1) through (17) shall be given with respect to all individuals who are or have been

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selected to become directors or officers of any such corporation or who perform or will perform functions appropriate to these positions.

(d) If the proposed acquisition of control referred to in subsection (a) requires the filing of a registration statement under the federal Securities Act of 1933 (15 U.S.C. 77a-15 U.S.C. 77aa) or requires the disclosure of similar information under the federal Securities Exchange Act of 1934 (15 U.S.C. 78a-15 U.S.C. 78kk) or under a state law requiring similar registration or disclosure, an acquiring party may utilize such documents in furnishing the information called for by the statement.

(e) The commissioner shall hold a public hearing on the proposed acquisition of control referred to in subsection (a) and shall thereafter approve such acquisition of control only if he finds, by a preponderance of the evidence, that:

- (1) the acquisition of control would not tend to affect adversely the contractual obligations of the domestic insurer or its ability and tendency to render service in the future to its policyholders and the public;
- (2) the effect of the acquisition of control would not be substantially to lessen competition in any line of insurance business in any section of this state or tend to create a monopoly therein;
- (3) the financial condition of any acquiring party is not such as might jeopardize the financial stability of the domestic insurer or of any corporation controlling such insurer, or prejudice the interest of its policyholders;
- (4) the plans or proposals which any acquiring party has to liquidate the domestic insurer or any such controlling corporation, sell its assets or consolidate or merge it with any person, or to make any other material change in its investment policy, business, corporate structure, or management are fair and reasonable to policyholders of the domestic insurer and in the public interest; and
- (5) the competence, experience, and integrity of those persons who would control the operation of the domestic insurer are such that the acquisition of control would not tend to affect adversely the general capacity or intention of the domestic insurer to transact the business of insurance in a safe and prudent manner.

(f) For the purposes of the commissioner's application of the competitive standard set forth in subsection (e)(2) to a proposed acquisition:

- (1) the acquiring person must file a pre-acquisition notification

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that meets the requirements set forth in section 2.5(e) of this chapter;

(2) the commissioner shall apply the provisions of section 2.5(h) of this chapter; and

(3) the commissioner may not disapprove the acquisition based upon the application of subsection(e)(2) if the commissioner finds that either of the conditions set forth in section 2.5(i) of this chapter applies to the proposed acquisition.

(g) The public hearing referred to in subsection (e) shall be held within sixty (60) days after all statements required by subsection (a) are filed, or within such longer period after the statements are filed as the commissioner determines upon a showing of good cause therefor, in the city of Indianapolis at such place, date, and time as the commissioner shall specify. At least thirty (30) days written notice of the hearing shall be given by the commissioner to each acquiring party, the domestic insurer, any corporation controlling such insurer, and to other persons as the commissioner may designate. In the event that an amendment to any such statement is filed, the hearing shall be postponed for a further period not to exceed sixty (60) days after the filing of such amendment, or for such longer period after the amendment is filed as the commissioner determines upon a showing of good cause therefor.

(h) The commissioner shall give notice of the hearing by publication in a newspaper of general circulation in the city of Indianapolis, and in the city wherein is located the principal office of the domestic insurer, and in such other city or cities as he may deem appropriate. Any policyholder of the domestic insurer who makes a written request to the commissioner is entitled to a copy of all statements, amendments, or other material filed with the commissioner by any acquiring party.

(i) The commissioner may retain at the acquiring party's expense any attorneys, actuaries, accountants, and other experts not otherwise a part of the commissioner's staff as may be reasonably necessary to assist the commissioner in reviewing the proposed acquisition of control. All hearing expenses, including transcript costs, expenses of publication and of preparing and mailing material to policyholders, shall be borne equally by each acquiring party. As security for the payment of such expenses, each acquiring party shall file with the commissioner an acceptable bond or other deposit in an amount to be determined by the commissioner.

(j) At such hearing, each acquiring party, the domestic insurer, any corporation controlling such insurer, policyholders of the domestic insurer, and any other person whose interests may be affected by the



proposed acquisition of control shall have the right to appear and become party to the proceeding. Each such person shall have the right to present evidence, examine and cross-examine witnesses, and offer oral and written arguments and in connection therewith shall be entitled to conduct discovery proceedings in the same manner as provided in the Indiana Rules of Trial Procedure. The commissioner may employ any sanction or power granted courts in the Indiana Rules of Trial Procedure, excluding the power of contempt, to enforce his discovery rulings or orders. The commissioner shall make a determination within thirty (30) days after the conclusion of such hearing and shall immediately upon making that determination notify all persons who appeared and became parties to the proceeding of that determination. To permit an aggrieved party to perfect an appeal under IC 27-1-23-12, no offer, request, invitation, agreement, or acquisition referred to in subsection (a) may be commenced, entered into, or consummated until two (2) business days have elapsed following the commissioner's determination approving an acquisition of control.

(k) Except as otherwise provided in this section, the hearing and the determination made therein shall be subject to IC 4-21.5-3.

(l) The provisions of this section shall not apply to the following:

- (1) Any merger, consolidation, or plan of exchange to be consummated with the approval of the commissioner ~~pursuant to~~ **under** the laws of this state.
- (2) Any transaction to be undertaken ~~pursuant to~~ **under** a statutory procedure for the purchase of dissenting shareholder's stock.
- (3) Any transaction to be undertaken ~~pursuant to~~ **under** a judicially approved reorganization.
- (4) Any offer, request, invitation, agreement, solicitation, or acquisition respecting any security of a domestic insurer or of any corporation controlling such insurer if any acquiring party, immediately prior to such offer, request, invitation, agreement, solicitation, or acquisition being commenced, entered into, begun, or consummated, beneficially owns more than fifty percent (50%) of all the outstanding voting securities of such domestic insurer or corporation controlling such insurer.
- (5) Any solicitation of proxies respecting any security of a domestic insurer or of any corporation controlling a domestic insurer that is undertaken by the management or the board of directors of the issuer of the security for purposes other than effecting, directly or indirectly, a transaction that would otherwise be subject to the requirements of this section.



(6) Any offer, request, invitation, agreement, solicitation, or acquisition respecting a security of a non-insurance corporation controlling one (1) or more domestic insurers if all of the following conditions are met:

(A) the offer, request, invitation, agreement, solicitation, or acquisition has been approved by the insurance regulatory authority of any state or territory of the United States of America other than Indiana, and the insurance regulatory authority of the state or territory has been accredited by the National Association of Insurance Commissioners;

(B) the domestic insurer or insurers meet all of the following conditions, determined in accordance with generally accepted accounting principles:

(i) the investments in and advances to the domestic insurer or insurers by the controlling non-insurance corporation and its other subsidiaries equal less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year;

(ii) the proportionate share of the controlling non-insurance corporation and its other subsidiaries in the total assets (after intercompany eliminations) of the domestic insurer or insurers equals less than ten percent (10%) of the total assets of the controlling non-insurance corporation and all of its subsidiaries consolidated as of the end of the most recently completed fiscal year; and

(iii) the equity of the controlling non-insurance corporation and its other subsidiaries in the income from continuing operations before income taxes, extraordinary items, and the cumulative effect of a change in accounting principle of the domestic insurer or insurers is less than ten percent (10%) of the income of that corporation and all of its subsidiaries consolidated for the end of the most recently completed fiscal year; and

(C) the commissioner has not determined that the application of this section to the offer, request, invitation, agreement, solicitation, or acquisition is necessary or appropriate for the protection of policyholders of the domestic insurer or insurers.

(7) Any acquisition of stock of a former mutual by a parent company, as those terms are defined in IC 27-15-1, that occurs in connection with the conversion of a mutual insurance company to a stock insurance company under

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IC 27-15, provided that no person acquires control of the parent company.

(m) The courts of this state are hereby vested with jurisdiction over every acquiring party not resident, domiciled, or authorized to do business in this state, and over all actions involving each such acquiring party arising out of violations of this section, and each such acquiring party shall be deemed to have performed acts equivalent to and constituting an appointment by the acquiring party of the commissioner to be his true and lawful attorney upon whom may be served all lawful process in any action, suit, or proceeding arising out of violations of this section. Copies of all such lawful process shall be served on the commissioner and transmitted by registered or certified mail by the commissioner to such acquiring party at his last known address.

SECTION 3. IC 27-15 IS ADDED TO THE INDIANA CODE AS A NEW ARTICLE TO READ AS FOLLOWS [EFFECTIVE UPON PASSAGE]:

ARTICLE 15. DEMUTUALIZATION OF MUTUAL INSURANCE COMPANIES

Chapter 1. General Provisions and Definitions

Sec. 1. This article may be referred to as the Indiana demutualization law.

Sec. 2. (a) Any domestic mutual insurance company that:

- (1) maintains its executive offices in Indiana; and
- (2) employs at least five hundred (500) persons or a substantial percentage of its workforce in Indiana;

may, by amendment to its articles of incorporation, convert to a stock insurance company by means of a plan of conversion described in IC 27-15-2-2 or a simple plan of conversion described in IC 27-15-2-3 under this article and IC 27-1-8.

(b) The commissioner shall determine whether a mutual insurance company meets the requirements of subsection (a)(2).

Sec. 3. The definitions set forth in this chapter and IC 27-1-2-3 apply throughout this article.

Sec. 4. "Closed block" means an allocation of assets for a defined group of in force policies which, together with the premiums of those policies and related investment earnings, are expected to be sufficient to maintain the payments of guaranteed benefits, certain expenses, and continuation of the current dividend scale on the closed block, if experience does not change.

Sec. 5. "Company action level RBC" has the meaning set forth in IC 27-1-36-6.

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Sec. 6. "Converting mutual" means a domestic mutual insurance company that has adopted a plan of conversion and an amendment to its articles of incorporation under this article that will, upon consummation, result in the domestic mutual insurance company converting into a domestic stock insurance company.

Sec. 7. "Eligible member" means a person who:

- (1) is a member of the converting mutual on the date the converting mutual's board of directors adopts a resolution proposing a plan of conversion and an amendment to the articles of incorporation; and
- (2) continues to be a member of the converting mutual on the effective date of the conversion.

Sec. 8. "Former mutual" means the domestic stock insurance company resulting from the conversion of a converting mutual to a stock insurance company under a plan of conversion and an amendment to its articles of incorporation under this article.

Sec. 9. "Member" means a person that, according to the:

- (1) records;
- (2) articles of incorporation; and
- (3) bylaws;

of a converting mutual, is a member of the converting mutual.

Sec. 10. "Membership interests" means:

- (1) the voting rights of members of a domestic mutual insurance company as provided by law and by the company's articles of incorporation and bylaws; and
- (2) the rights of members of a domestic mutual insurance company to receive cash, stock, or other consideration in the event of a conversion to a stock insurance company under this article or a dissolution under IC 27-1-10, as provided by those laws and by the company's articles of incorporation and bylaws.

Sec. 11. "Parent company" means a corporation that, upon the effective date of a conversion, owns all of the stock of the former mutual.

Sec. 12. "Plan of conversion" means the plan of conversion described in either IC 27-15-2-2 or IC 27-15-2-3.

Sec. 13. "RBC level" has the meaning set forth in IC 27-1-36-18.

Sec. 14. "Simple plan of conversion" means the plan of conversion described in IC 27-15-2-3.

Chapter 2. Plan of Conversion

Sec. 1. The board of directors of the converting mutual shall commence the demutualization process by adopting a resolution

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that proposes:

- (1) the amendment of its articles of incorporation under IC 27-1-8-2; and
- (2) a plan of conversion.

Sec. 2. The plan of conversion, other than a simple plan of conversion, must do the following in accordance with this article:

- (1) Describe the manner in which the proposed conversion will occur and the insurance and any other companies that will result from or be directly affected by the conversion, including the former mutual and any parent company.
- (2) Provide that the membership interests in the converting mutual will be extinguished as of the effective date of the conversion.
- (3) Require the distribution to the eligible members, upon the extinguishing of their membership interests, of aggregate consideration equal to the fair value of the converting mutual.
- (4) Describe the manner in which the fair value of the converting mutual has been or will be determined.
- (5) Describe the form or forms and amount, if known, of consideration to be distributed to the eligible members.
- (6) Specify relevant classes, categories, or groups of eligible members, and describe and explain any differences in the form or forms and amount of consideration to be distributed to or among the eligible members.
- (7) Require and describe the method or formula for the fair and equitable allocation of the consideration among the eligible members.
- (8) Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends, through establishment of a closed block or other method acceptable to the commissioner.
- (9) Provide that each member and other policyholder of the converting mutual will receive notification of the address and telephone number of the converting mutual and the former mutual, if different, along with the notice of hearing outlined in IC 27-15-4-4.
- (10) Include other provisions as the converting mutual determines to be necessary.

Sec. 3 (a) The board of directors of the converting mutual may adopt a simple plan of conversion under this section. The simple plan of conversion must include the following:

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- (1) The distribution to the eligible members, upon the extinguishing of their membership interests, of all of the initial issue of the voting common stock of the former mutual or any parent company. The initial issue of the voting common stock may include only one (1) class of stock, and may not include more than one (1) series of stock.
 - (2) Describe the manner in which the proposed conversion will occur and the insurance and any other companies that will result from or be directly affected by the conversion, including the former mutual and any parent company.
 - (3) Provide that the membership interests in the converting mutual will be extinguished as of the effective date of the conversion.
 - (4) Provide for the registration of that distribution of stock under section 5 of the federal Securities Act of 1933, as amended.
 - (5) Specify each separate class, category, or group of eligible members, and describe and explain any differences in the amount of stock to be distributed to or among the eligible members of each separate class, category, or group of eligible members.
 - (6) Require and describe the method or formula for the fair and equitable allocation of the stock among the eligible members.
 - (7) Provide for the determination and preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends, through the establishment of a closed block or other method acceptable to the commissioner.
- (b) The plan may include other provisions:
- (1) that the converting mutual determines to be necessary; and
 - (2) consistent with this title.

Chapter 3. Application for Conversion

Sec. 1. After the adoption by the board of directors of the resolution proposing the plan of conversion under IC 27-15-2 and the amendment to its articles of incorporation, the converting mutual shall file with the commissioner an application for approval of the plan and amendment.

Sec. 2. The application must contain the following information, together with such additional information as the commissioner



may require:

- (1) The plan of conversion and a certificate of the secretary of the converting mutual certifying the adoption of the plan by the board of directors.
- (2) A statement of the reasons for the proposed conversion and why the conversion is in the best interests of the converting mutual, the eligible members, and the other policyholders. The statement must include an analysis of the risks and benefits to the converting mutual and its members of the proposed conversion and a comparison of the risks and benefits of the conversion with the risks and benefits of reasonable alternatives to a conversion.
- (3) A five (5) year business plan and at least two (2) years of financial projections of the former mutual and any parent company.
- (4) Any plans that the former mutual or any parent company may have to:
 - (A) raise additional capital through the issuance of stock or otherwise;
 - (B) sell or issue stock to any person, including any compensation or benefit plan for directors, officers, or employees under which stock may be issued;
 - (C) liquidate or dissolve any company or sell any material assets;
 - (D) merge or consolidate or pursue any other form of reorganization with any person; or
 - (E) make any other material change in investment policy, business, corporate structure, or management.
- (5) Any plans for a delayed distribution of consideration to eligible members or restrictions on sale or transfer of stock or other securities.
- (6) A copy of the form of trust agreement, if a distribution of consideration is to be delayed by more than six (6) months after the effective date of the conversion.
- (7) A plan of operation for a closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.
- (8) Copies of the amendment to the articles of incorporation proposed by the board of directors and the proposed bylaws of the former mutual and copies of the existing and any proposed articles of incorporation and bylaws of any parent

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company.

(9) A list of all individuals who are or have been selected to become directors or officers of the former mutual and any parent company, or the individuals who perform or will perform duties customarily performed by a director or officer, and the following information concerning each individual on the list unless the information is already on file with the commissioner:

(A) The individual's principal occupation.

(B) All offices and positions the individual has held in the preceding five (5) years.

(C) Any crime of which the individual has been convicted (other than traffic violations) in the preceding ten (10) years.

(D) Information concerning any personal bankruptcy of the individual or the individual's spouse during the previous seven (7) years.

(E) Information concerning the bankruptcy of any corporation or other entity of which the individual was an officer or director during the previous seven (7) years.

(F) Information concerning allegations of state or federal securities law violations made against the individual that within the previous ten (10) years resulted in:

- (i) a determination that the individual violated state or federal securities law;
- (ii) a plea of nolo contendere; or
- (iii) a consent decree.

(G) Information concerning the suspension, revocation, or other disciplinary action during the previous ten (10) years of any state or federal license issued to the individual.

(H) Information as to whether the individual was refused a bond during the previous ten (10) years.

(10) A fairness opinion addressed to the board of directors of the converting mutual from a qualified, independent financial adviser, asserting:

(A) that the provision of stock, cash, policy benefits, or other forms of consideration upon the extinguishing of the converting mutual's membership interests under the plan of conversion and the amendment to the articles of incorporation is fair to the eligible members, as a group, from a financial point of view; and

(B) whether the total consideration under clause (A) is

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equal to or greater than the surplus of the converting mutual.

(11) An actuarial opinion as to the following:

(A) The reasonableness and appropriateness of the methodology or formulas used to allocate consideration among eligible members, consistent with this article.

(B) The reasonableness of the plan of operation and the sufficiency of the assets allocated to the closed block, if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders with policies that provide for the distribution of policy dividends.

(12) If any of the consideration to be distributed to eligible members consists of stock or other securities, a description of the plans made by the former mutual or its parent company to assure that an active public trading market for the stock or other securities will develop within a reasonable amount of time after the effective date of the plan of conversion and that eligible members who receive stock or other securities will be able to sell their stock or other securities, subject to any delayed distribution or transfer restrictions under this article, at reasonable cost and effort. The plans may consist of the following:

(A) Appointing a registrar and transfer agent for the stock or other securities.

(B) Making filings, applications, or registrations for the stock or other securities with the federal Securities and Exchange Commission and state securities commissioners.

(C) Listing the stock or other securities on a national or other securities exchange.

(D) Facilitating coverage of the stock or other securities by research analysts and securing the commitment of at least one (1) market maker to make a market in the stock or other securities.

(E) Conducting an underwritten public offering of the same class of stock or other securities, promptly following the effectiveness of the plan of conversion, in order to facilitate the development of a public market.

(F) Making available a procedure for eligible members holding small numbers or amounts of stock or other securities to sell their stock or other securities to the former mutual or a parent company at market value



without the payment of brokerage commissions or similar fees, or to sell their stock or other securities in the market through a broker with discounted brokerage commissions or fees.

(13) Any additional information, documents, or materials that the converting mutual determines to be necessary.

(14) Any other additional information, documents, or materials that the commissioner requests in writing.

Sec. 3. Notwithstanding section 2 of this chapter, the opinion described in section 2(10) of this chapter is not required under this chapter if the converting mutual utilizes a simple plan of conversion.

Sec. 4. The actuarial opinion required by this chapter shall be:

(1) provided and signed by a qualified and independent actuary who is a member of the American Academy of Actuaries;

(2) given in accordance with professional standards and practices generally accepted by the actuarial profession and those other factors as the actuary believes are reasonable and appropriate in the exercise of professional judgment at the time the opinion is given;

(3) supported by a memorandum of the actuary, describing the calculations made in support of the opinion and the assumptions used in the calculations; and

(4) submitted to the commissioner.

Chapter 4. Public Hearing and Commissioner's Determination

Sec. 1. (a) The commissioner shall determine, within forty-five (45) days after the later of:

(1) the submission of an application for approval of a plan of conversion; or

(2) the submission of any amendment to the application; whether the application is complete.

(b) Upon determining that the application is complete, the commissioner shall designate a date for a public hearing on the plan of conversion and the amendment to the articles of incorporation.

(c) No public hearing by the commissioner under this chapter is required for a simple plan of conversion.

Sec. 2. The commissioner shall hold a public hearing upon the plan of conversion and the amendment to the articles of incorporation. The purpose of the public hearing shall be to receive comments and information to aid the commissioner in considering

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and approving or disapproving the application for approval of the plan of conversion and the amendment to the articles of incorporation. Persons wishing to make comments and submit information may submit written statements before or at the public hearing and may also appear and be heard at the public hearing.

Sec. 3. The public hearing shall commence within sixty (60) days after the date on which the commissioner determines the application is complete, unless the converting mutual requests, and the commissioner agrees to, a longer period. In the event that an amendment to the plan of conversion or the application for approval is filed with the commissioner after the commissioner has determined the application is complete, the hearing may be postponed for a period not to exceed sixty (60) days after the filing of the amendment.

Sec. 4. (a) The converting mutual shall provide at least thirty (30) days prior written notice of the hearing to its members and other policyholders as of the date its board of directors adopted the resolution proposing the plan of conversion.

(b) The notice must include the following:

- (1)** A brief statement of the subject of the hearing, the date, time, and location of the hearing.
- (2)** A description of members eligible to vote on the plan of conversion and the amendment to the articles of incorporation.
- (3)** A statement that the members and policyholders may examine, at the department, the public record portion of the application submitted to the commissioner.
- (4)** The address and telephone number of the converting mutual and, if different, the former mutual.

(c) The converting mutual shall provide the commissioner with the proposed form and content of the notice not less than fifteen (15) days before notice is to be provided to the members and policyholders, and the commissioner shall approve or disapprove the form and content of the notice within ten (10) days after its submission to the commissioner. The notice to members and other policyholders shall, after approval by the commissioner, be provided by mail or other means approved by the commissioner.

Sec. 5. (a) The converting mutual shall cause notice of the public hearing to be published in a newspaper of general circulation in the city where the principal office of the converting mutual is located, in Indianapolis, and in any other city specified by the commissioner at the time the commissioner determines that the application is



complete.

(b) The notice shall be published at least two (2) times at intervals of not less than two (2) weeks, the first publication to be not more than forty-five (45) days and the last publication not less than fifteen (15) days before the public hearing. The notice of the public hearing shall state the purpose of the hearing and the date, time, and place where the hearing will occur.

(c) The converting mutual shall provide the commissioner with the proposed form and content of the notice not less than fifteen (15) days before it is to be first published, and the commissioner shall approve or disapprove the form and content of the notice within ten (10) days after its submission to the commissioner.

Sec. 6. The hearing shall be conducted by the commissioner or by the commissioner's designee, consistent with the procedures described in IC 4-22-2-26.

Sec. 7. (a) The commissioner shall fully consider any comments received at a required hearing consistent with IC 4-22-2-27 before issuing an order approving or disapproving the application, plan of conversion, and amendment to the articles of incorporation.

(b) The commissioner's order or determination shall:

- (1) be issued within thirty (30) days after the last day of the public hearing or, for a simple plan of conversion, within ninety (90) days after the filing of an application for approval of the plan;
- (2) be in writing; and
- (3) detail the reasons why the converting mutual's application is approved or disapproved.

Sec. 8. The commissioner shall approve the application and permit the conversion under the plan of conversion and the amendment to the articles of incorporation if the commissioner finds, following the public hearing, if required:

- (1) that the amount and form of consideration is fair in the aggregate and to each member class;
- (2) that the plan of conversion and the amendment to the articles of incorporation:
 - (A) comply with this article and other applicable laws;
 - (B) are fair, reasonable, and equitable to the eligible members; and
 - (C) will not prejudice the interests of the other policyholders of the converting mutual; and
- (3) except for a simple plan of conversion, that the total consideration provided to eligible members upon the

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extinguishing of the converting mutual's membership interests is equal to or greater than the surplus of the converting mutual.

Sec. 9. The commissioner may waive the requirement of section 8(3) of this chapter upon a showing of good cause.

Chapter 5. Voting on the Plan by Members

Sec. 1. The proposed plan of conversion and amendment to the articles of incorporation of the converting mutual shall be submitted to a vote of the members of the converting mutual, as provided in IC 27-1-8-3 and in this chapter.

Sec. 2. The meeting of members shall be held not later than ninety (90) days after the later of:

- (1) the issuance of the commissioner's order approving the conversion; or
- (2) the final resolution of an appeal of that decision under this article.

Sec. 3. (a) The members of the converting mutual entitled to vote on the plan of conversion and the amendment to the articles of incorporation shall be given written notice of their opportunity to vote. The notice shall be accompanied by explanatory information concerning the conversion and may be accompanied by proxy solicitation materials.

(b) The form and content of the notice, explanatory information, and any proxy solicitation materials must be provided to the commissioner not less than twenty (20) business days before they are mailed to the members, and the commissioner shall approve or disapprove the form and content of the notice, explanatory materials, and any proxy solicitation materials within fifteen (15) business days after their submission to the commissioner.

(c) The notice and explanatory materials must include the following:

- (1) Reference to the applicable statutory provisions.
- (2) The date, time, and location of the meeting.
- (3) A brief statement of the subject of the meeting.
- (4) A copy of the plan of conversion and a summary of the plan.
- (5) A copy of the amendment to the articles of incorporation and a summary of the amendment.
- (6) A description of the member's right to attend and participate in the meeting.
- (7) The definition of the term "eligible member".
- (8) A statement that no member will receive consideration as

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a result of the conversion unless the member continues to be a member of the converting mutual on the effective date of the conversion.

(9) For each form of consideration, a description of the nature and amount of consideration that will be provided to the eligible members upon completion of the conversion and, if reasonably ascertainable by the converting mutual, a description of the nature and amount or approximate amount of consideration to be provided to the particular member to whom the notice is addressed.

Sec. 4. The notice described in section 3 of this chapter:

(1) must achieve a minimum score of forty (40) on the Flesch reading ease test or an equivalent score on a comparable test approved by the commissioner;

(2) shall be mailed, or provided by some other method or methods as may be approved by the commissioner, not less than thirty (30) days before the date of the meeting of members to vote on the plan of conversion and amendment to the articles of incorporation; and

(3) may be combined with any other notices, materials, or information.

Sec. 5. (a) Only members of the converting mutual as of both:

(1) the date the converting mutual's board of directors adopted the resolution proposing the plan of conversion and the amendment to the articles of incorporation; and

(2) the record date for the members' meeting established by the board of directors;

are entitled to vote on the proposed plan of conversion and the amendment to the articles of incorporation of the converting mutual.

(b) Each member is entitled to cast only one (1) vote, irrespective of the number or value of policies held, unless the converting mutual's articles of incorporation provide otherwise.

Sec. 6. Notwithstanding IC 27-1-7-9, a member may vote by proxy only if:

(1) the proxy was solicited and obtained from the member for the express purpose of voting on the plan of conversion and the amendment to the articles of incorporation; and

(2) the proxy solicitation materials were provided to and approved by the commissioner before they were mailed or provided to the member.

Sec. 7. The proposed plan of conversion and amendment to the

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converting mutual's articles of incorporation shall be approved by the members upon receiving the affirmative votes of:

- (1) at least two-thirds (2/3) of the members voting at the meeting; and
- (2) if the plan provides for different classes, categories, or groups of eligible members to receive different forms of consideration, other than as permitted by IC 27-15-8-4(b)(2) or IC 27-15-12, at least two-thirds (2/3) of the members voting at the meeting who would receive each different form of consideration, voting as a class.

Chapter 6. Implementation of Approved Plan of Conversion

Sec. 1. After the proposed plan of conversion and amendment to the converting mutual's articles of incorporation are approved by the commissioner and approved by the members under this article, the converting mutual may proceed to consummate the plan and comply with IC 27-1-8.

Sec. 2. The plan of conversion and the amendment to the articles of incorporation of the converting mutual become effective upon the date and time of approval of the articles of amendment by the secretary of state as provided in IC 27-1-8-8, unless a later date and time are specified in the articles of amendment, in which event the plan of conversion and amendment become effective and take place at the later date and time.

Sec. 3. When the plan of conversion and the amendment to the articles of incorporation of the converting mutual become effective:

- (1) the converting mutual shall:
 - (A) be converted from a domestic mutual insurance company to a domestic stock insurance company; and
 - (B) have all the rights, privileges, immunities, and powers and be subject to all the duties and liabilities of a stock insurance company existing under this title;
- (2) the membership interests of every member and policyholder of the converting mutual are extinguished and cease; and
- (3) the rights of every member and policyholder of the converting mutual under any contract of insurance continue in force under the terms of the contract, including rights, if any, to policyholder dividends.

Sec. 4. The former mutual shall be a continuation of the original converting mutual in all of the following respects:

- (1) The former mutual shall be recognized as an insurance

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company formed under the laws of this state as of the date of the company's original organization.

(2) The conversion does not in any way annul, modify, or change any of the original converting mutual's existing suits, claims, demands, rights, contracts, or other assets, or absolute or contingent liabilities.

(3) The former mutual shall be vested in all of the rights, franchises, and interests of the converting mutual in and to every species of property without any deed or transfer.

(4) The former mutual shall succeed to all the obligations and liabilities of the converting mutual and retain all rights and contracts existing before the effectiveness of the conversion.

Sec. 5. The former mutual shall comply with the minimum capital and surplus requirements applicable to domestic stock insurance companies as though the former mutual was organized as a stock insurance company on its original date of organization.

Chapter 7. Confidential Records

Sec. 1. Except as otherwise specifically provided in this chapter, IC 5-14 applies to all filings made under this article.

Sec. 2. Filings, information, and documents made with or provided to the commissioner under this article may include information that might be damaging to a converting mutual or its affiliates if made available to competitors. Subject to section 3 of this chapter, all documents containing trade secrets of a converting mutual or its affiliates and marked "confidential" by the converting mutual:

- (1) are declared confidential for purposes of IC 5-14-3-4;
- (2) are not subject to inspection and copying by the public under IC 5-14-3-3;
- (3) may be disclosed by the commissioner to the department of insurance of another state if that department of insurance agrees to keep the information confidential; and
- (4) may not be disclosed by the commissioner to any person other than a department of insurance under subdivision (3) without the written consent of the converting mutual.

Sec. 3. (a) Subject to subsection (c), the commissioner may disclose to any person all or part of any document marked "confidential" in the commissioner's possession as the result of being filed under this article if the following conditions are met:

- (1) The commissioner must give written notice of the proposed disclosure to the converting mutual and any other person requesting disclosure.



- (2) The converting mutual must be given an opportunity in private to respond to the proposed disclosure.
- (3) The commissioner must give consideration to any legitimate interest in preserving trade secrets.
- (4) The commissioner must determine that the eligible members or other policyholders have a compelling interest which would be served by disclosure.
- (5) At least five (5) business days have elapsed from the converting mutual's receipt of written notice.
- (b) The commissioner may disclose information under subsection (a) in a manner and subject to limitations as the commissioner considers appropriate.
- (c) If:
 - (1) not more than six (6) business days have elapsed since the converting mutual received notice of a proposed disclosure; and
 - (2) the converting mutual has notified the commissioner that it or another interested party has filed an action seeking a protective order from a circuit or superior court to prevent or to limit disclosure;

the commissioner may not disclose the documents or copies of documents during the pendency of the action and any appeal or after any final court decision prohibiting disclosure.

Chapter 8. Distribution of Consideration to Members

Sec. 1. The consideration to be distributed to the eligible members shall be:

- (1) cash;
- (2) stock or other securities of the former mutual or of the parent company;
- (3) additional paid up insurance or annuity benefits;
- (4) any combination of the forms of consideration listed in this section; or
- (5) other forms of consideration described in the plan of conversion and approved by the commissioner.

Sec. 2. The amount and the form or forms of consideration to be distributed to a class, category, or group of eligible members may differ from the amount and form or forms of consideration to be distributed to another class, category, or group of eligible members. The choice of the amount and form or forms of consideration to be distributed to a class or category of eligible members may take into account such factors as the type of policies with respect to which the consideration is being distributed, the

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country or state of residence or tax status of the eligible members, the length of time the eligible members have been members of the converting mutual, or other appropriate factors or circumstances described in the plan of conversion.

Sec. 3. Distribution of all or part of the consideration to some or all of the eligible members may be delayed, or restrictions on sale or transfer of any stock or other securities to be distributed to eligible members may be required, for a reasonable period of time following the effective date of the conversion. However, the period of time may not exceed six (6) months except as permitted under IC 27-15-12.

Sec. 4. (a) A converting mutual using IC 27-15-2-2 or a converting mutual using a simple plan of conversion under IC 27-15-2-3 may satisfy the requirement to distribute the fair value of the converting company to the eligible members by providing for the distribution to the eligible members of all of the initial stock without the payment by or to the eligible members of any additional consideration.

(b) For purposes of this section, all of the initial issue of the only class of voting common stock of the former mutual or a parent company shall be considered distributed to the eligible members even if the plan of conversion or the application for approval provides for:

(1) the offer or sale, promptly following the effective date of the plan of conversion, to the public or to other persons of additional shares of the same class of voting common stock of the former mutual or a parent company at a price not less than the fair market value of that stock, with the proposed terms of the transaction disclosed to the commissioner in the application for approval;

(2) the distribution to or for the benefit of certain classes, categories, or groups of eligible members of cash, additional paid up insurance or annuity benefits, or other consideration in lieu of initial stock of the former mutual or a parent company, if:

(A) other consideration is required or appropriate as a result of tax considerations, the country or state of residence of the eligible members, the nominal value of the stock that those eligible members otherwise would be entitled to receive, or other factors or circumstances approved by the commissioner;

(B) the value of the other consideration to be distributed to



those eligible members is substantially equal, as of the effective date of the conversion, to the value of the stock those eligible members otherwise would be entitled to receive;

(C) the eligible members who receive any consideration other than stock constitute not more than ten percent (10%) of the total number of eligible members; and

(D) the classes, categories, or groups of those eligible members, and the consideration they are to receive in lieu of stock, are described in the plan of conversion, with all additional material terms and conditions disclosed in the application for approval; or

(3) a delayed distribution of consideration that is approved under section 3 of this chapter or IC 27-15-12.

Chapter 9. Formula for Allocation of Consideration Among Members

Sec. 1. The method or formula for allocating consideration among the eligible members shall provide for each eligible member to receive:

- (1) a fixed value, amount, or proportion of consideration;
- (2) a variable value, amount, or proportion of consideration;
- or
- (3) a combination of fixed and variable values, amounts, or proportions of consideration.

Sec. 2. Any method used or formula developed for the fair and equitable allocation of stock among eligible members under this article must utilize generally accepted actuarial principles.

Chapter 10. Dividend Preservation

Sec. 1. (a) The sole purpose of any dividend preservation provision shall be to provide for reasonable policyholder dividend expectations on policies that provide for the distribution of policy dividends.

(b) No dividend preservation provision in a plan under this article shall be permitted:

- (1) to be a substitute for the distribution of consideration to eligible members upon extinguishing their membership interests as required by this article; or
- (2) to diminish any contractual rights to a dividend that a member or policyholder may have.

Sec. 2. Any dividend preservation provision may be limited to participating individual life insurance policies and participating individual annuity contracts in force or considered to be in force



by the plan of conversion on the effective date of the plan of conversion for which the mutual insurer has an experience based dividend scale due, paid, or accrued by action of the board of directors of the converting mutual in the year in which the plan of reorganization is adopted. However:

- (1) policies that would be included but for the fact that their recent issuance results in no dividends for an initial period may be included;
- (2) policies that are in force as extended term insurance may be included; and
- (3) other categories of policies and benefits not described in this subsection may be included or excluded, subject to the approval of the commissioner.

Chapter 11. Use of a Closed Block

Sec. 1. This chapter applies if a closed block is used for the preservation of the reasonable dividend expectations of eligible members and other policyholders.

Sec. 2. The converting mutual shall prepare a written plan of operation for the closed block, consistent with the requirements of this article.

Sec. 3. The closed block shall be operated for the exclusive benefit of policies and contracts included in it. No costs or expenses incurred in connection with the conversion shall be charged to the closed block. Subject to termination of the closed block under section 7 of this chapter, none of the assets allocated to the closed block or the revenue derived from those assets may revert to the benefit of the stockholders of the former mutual or any parent company.

Sec. 4. The assets allocated to the closed block, together with the revenue from the closed block, must be reasonably sufficient to:

- (1) support the business in the closed block until the time the last policy in the closed block has terminated, including payment of claims and those expenses and taxes as are specified in the plan of conversion; and
- (2) provide for:
 - (A) continuation of dividend scales in effect on the date the board of directors adopted the resolution proposing the plan of conversion, if the experience underlying those scales continues; and
 - (B) appropriate adjustments in the scales if the experience changes.

Sec. 5. The assets assigned to a closed block shall be specified in



the plan of operation and must consist of:

- (1) a list of designated assets of the converting mutual's general account or specified segments of the converting mutual's general account, which list shall change periodically to reflect the acquisition and disposition of assets;
- (2) a designated portion of each and every asset of the converting mutual's general account or specified segments of the converting mutual's general account, which portion shall change periodically to reflect the cash flows of the closed block; or
- (3) assets designated by a combination of the methods described in this section.

Sec. 6. The plan of operation must specify the following:

- (1) The method of assignment of closed block assets referred to in section 5 of this chapter that is being used.
- (2) The methods by which the designations of assets or portions of assets are changed during the course of closed block operations.

Sec. 7. The plan of operation must provide for the conditions under which the former mutual, with the approval of the commissioner, may cease to maintain the closed block.

Sec. 8. The former mutual shall:

- (1) submit to the commissioner annual reports, in a form acceptable to the commissioner, that account for and describe the operations of the closed block; and
- (2) as specified in the plan of operation, provide at least every three (3) years for reviews of, and reports and opinions on, the closed block by an independent actuary, unless otherwise directed by the commissioner.

Chapter 12. Effect of Pending Claims on the Distribution of Consideration to Members

Sec. 1. All or part of the consideration to be distributed to some or all of the eligible members may be delayed by more than six (6) months following the effective date of the plan of conversion if:

- (1) the plan of conversion includes a provision for the establishment of a trust for that purpose; and
- (2) one (1) or more of the following claims have been asserted against a converting mutual and remain unresolved at the effective date of the plan of conversion:
 - (A) A claim seeking the imposition of a constructive or charitable trust on assets of the converting mutual for the benefit of policyholders, members, or other identified or



unidentified persons.

(B) A claim seeking distribution or return of assets, or other form of compensation, from the converting mutual to policyholders, members, or other identified or unidentified persons.

(C) A claim that arises out of or relates to the ownership interest of members of the converting mutual, or to the value of their ownership interests, including any claim that challenges a statutory transaction engaged in by the converting mutual before the effective date of the plan of conversion.

Sec. 2. (a) At the effective date of the plan of conversion, assets adequate to satisfy a claim described in section 1 of this chapter, consisting of the consideration that otherwise would be distributed directly to eligible members, must be placed in trust under a trust agreement in a form approved by the commissioner. The trustee or trustees of the trust shall:

(1) be appointed by the board of directors of the converting mutual, subject to disapproval of any trustee by the commissioner; and

(2) consist of one (1) or more institutions authorized by Indiana law to act as corporate trustees.

(b) The beneficiaries of the trust:

(1) are the eligible members who, in the absence of the claims, would have been entitled to the consideration placed in the trust; and

(2) may consist of all of the eligible members or specified classes or groups of eligible members.

(c) Assets of the trust shall be made available to pay or otherwise satisfy the claims for which the trust has been established, the expenses of the trust in contesting or resolving those claims, and any other reasonable expenses of the trust. Upon final resolution of the claims, by judgment, settlement or otherwise, or at such other times as may be provided for in the trust agreement, the remaining assets of the trust shall be distributed to the beneficiaries in accordance with their respective interests in the trust.

(d) Until the trust has been terminated, the trustee or trustees shall prepare reports not less frequently than annually, upon termination of the trust, and at such other times as may be requested by the commissioner or the former mutual. The reports must contain information regarding the financial condition of the



trust and the status of any resolved and pending claims. The reports shall be provided to the commissioner and the former mutual and the reports or summary reports shall be mailed at least annually to the beneficiaries of the trust at the expense of the trust.

(e) An interest in a trust established under this section does not constitute a security under Indiana law.

(f) The establishment of a trust or pendency of any claim described in this chapter shall not delay or affect the effectiveness of a plan of conversion or an amendment to the articles of incorporation.

Chapter 13. Initial Limits on Ownership of Shares

Sec. 1. (a) Except as specifically provided in a plan of conversion, for five (5) years following the effective date of the conversion no person or persons acting in concert (other than the former mutual, any parent company, or any employee benefit plans or trusts sponsored by the former mutual or a parent company) shall directly or indirectly acquire, or agree or offer to acquire, in any manner the beneficial ownership of five percent (5%) or more of the outstanding shares of any class of a voting security of the former mutual or any parent company without the prior approval by the commissioner of a statement filed by that person with the commissioner.

(b) The statement described in subsection (a) must contain the information required by IC 27-1-23-2(b) and any other information required by the commissioner.

Sec. 2. (a) The commissioner may not approve an acquisition under section 1(a) of this chapter unless the commissioner finds that:

- (1) the requirements of IC 27-1-23-2(e) will be satisfied;
- (2) the acquisition will not frustrate the plan of conversion or the amendment to the articles of incorporation as approved by the members and the commissioner;
- (3) the boards of directors of the former mutual and any parent company have approved the acquisition; and
- (4) the acquisition would be in the best interest of the present and future policyholders of the former mutual without regard to any interest of policyholders as shareholders of the former mutual or any parent company.

(b) The commissioner shall adopt rules under IC 4-22-2 to establish a procedure under which an institutional investor that is not affiliated with the former mutual or a parent company may be considered to have been approved by the commissioner under this



section to acquire beneficial ownership of at least five percent (5%) or less than ten percent (10%) of the outstanding shares of any class of a voting security of the former mutual or any parent company upon the filing with the commissioner of:

(1) a certificate executed by appropriate officers of the former mutual and any parent company certifying that:

(A) the acquisition has been approved by the boards of directors of the former mutual and any parent company; and

(B) the institutional investor is not an affiliate of the former mutual or any parent company; and

(2) a certificate executed by appropriate officers of the institutional investor:

(A) certifying that the institutional investor will acquire the shares in the ordinary course of its business and not with the purpose nor with the effect of changing or influencing the control, management, or policies of the former mutual or the parent company;

(B) certifying that the institutional investor is not an affiliate of the former mutual or any parent company; and

(C) undertaking to notify the commissioner and the former mutual and any parent company in writing not less than twenty (20) business days before any change in the matters certified.

The commissioner may require the filing of any other information the commissioner considers necessary and may provide in the rules for remedies or consequences upon receipt of a notice under subdivision (2)(C), including divestiture and denial of voting rights.

Sec. 3. A security that is:

(1) the subject of any agreement or arrangement regarding acquisition; or

(2) held, acquired, or is to be acquired;

in contravention of this chapter or of an order of the commissioner, may not be voted at any shareholders' meeting. Any action of shareholders requiring the affirmative vote of a percentage of shares may be taken as though the securities were not issued and outstanding. However, no action taken at a meeting shall be invalidated by the voting of those securities unless the action would materially affect control of the former mutual or a person that owns or controls a majority or all of the voting securities of the former mutual or unless the courts of this state have so ordered.

Sec. 4. The requirements of this chapter are in addition to any



other filings or approvals required by IC 27-1-23 or otherwise by law.

Chapter 14. Modified Conversion Requirements for Companies in Hazardous Financial Condition

Sec. 1. (a) If a domestic mutual insurance company:

- (1) is insolvent, as defined in IC 27-9-1-2(l);
- (2) does not meet the minimum surplus requirements of IC 27-1-6-15; or
- (3) in the judgment of the commissioner, is in a hazardous financial condition;

its board of directors may adopt, and the commissioner may approve, any plan of conversion and amendment to the articles of incorporation that, on the effective date of the conversion, would provide for the former mutual to have paid-in capital stock and surplus in an amount not less than the minimum requirements of IC 27-1-6-14(c) and IC 27-1-6-14(e) and an RBC level greater than its company action RBC level.

(b) The commissioner may allow waivers or material modifications of the requirement to give any notices to members and policyholders, to obtain member approval of the proposed plan of conversion or amendment to the articles of incorporation of the converting mutual, or to distribute consideration to members if the value of a converting mutual described in subsection (a) does not in the judgment of the commissioner warrant any such notices, approvals, or distribution under the circumstances, including the expenses involved in a distribution of consideration.

Sec. 2. The application for approval of a plan of conversion and an amendment to the articles of incorporation described in section 1 of this chapter must include a description of how the converting mutual will meet the statutory surplus and capital requirements on the date the plan of conversion is completed, which may involve the issuance and sale directly to one (1) or more purchasers of the capital stock of the former mutual or of a parent company.

Sec. 3. The commissioner shall approve the application and permit the conversion under a plan of conversion and an amendment to the articles of incorporation described in this chapter if the commissioner finds, following a public hearing, that the plan of conversion and the amendment to the articles of incorporation are in the best interests of the members and policyholders of the converting mutual, without regard to their membership interests.

Sec. 4. The requirements of this chapter are in addition to, and

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may be combined with, any other filings, approvals, or hearings required by IC 27-1-23 or otherwise by law.

Chapter 15. Judicial Review

Sec. 1. A person who is aggrieved by an agency action of the commissioner under this article may petition for judicial review of the action under IC 4-21.5-5.

Sec. 2. All petitions for judicial review of, and any action challenging the validity of or arising out of:

- (1) the approval or disapproval of; or
- (2) any action proposed to be taken under;

any order or determination of the commissioner in connection with a plan of conversion under this article must be filed not later than thirty (30) days after the order or determination is issued by the commissioner.

Sec. 3. A person who is aggrieved by a failure of the commissioner to act or make a determination required by this article may bring an action for mandate in the circuit court of Marion County to compel the commissioner to act or make the determination.

Chapter 16. Miscellaneous Provisions

Sec. 1. A parent company under this article:

- (1) shall locate its executive offices in Indiana;
- (2) shall employ at least five hundred (500) persons or a substantial percentage of its workforce in Indiana;
- (3) shall be organized under the laws of Indiana; and
- (4) may be:
 - (A) a corporation organized for the purpose of serving as a holding company for the former mutual or a corporation that, before the conversion, was a subsidiary of the converting mutual; or
 - (B) any other existing or newly created corporation.

Sec. 2. The commissioner may adopt rules under IC 4-22-2 necessary for the administration of this article.

Sec. 3. (a) The commissioner may, at the expense of a converting mutual that has:

- (1) filed an application under this article;
- (2) notified the commissioner of its intention to file an application under this article; or
- (3) adopted a resolution proposing a simple plan of conversion under this article;

hire accountants, actuaries, attorneys, financial advisors, investment bankers, and other experts that are necessary to assist



the commissioner in reviewing all matters under this article.

(b) The commissioner may at any time require the converting mutual to deposit an amount of money with the department in anticipation of expenses to be incurred by the commissioner under this section.

Sec. 4. If a converting mutual complies substantially and in good faith with this article with respect to any required notice to members and policyholders, its failure in any case to give the notice to any person entitled to notice does not:

- (1) impair the validity of actions taken under this article; or
- (2) entitle the person to any injunctive or other relief.

Sec. 5. At any time before the effective date of the plan of conversion, the plan may be abandoned under provisions included in the plan of conversion filed under this article.

Sec. 6. After conversion, the name of the former mutual may not include the term "mutual".

SECTION 4. IC 27-1-8-13 IS REPEALED [EFFECTIVE UPON PASSAGE].

SECTION 5. An emergency is declared for this act.

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